

JOHN V. O’CONNOR, ESQ.
1110 Hardscrabble Road
Chappaqua, New York 10514
Tel. (516) 423-9296
Attorneys for Defendant(s)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Civil Action No.: 14-CV-8141-VB

FERNANDO ARELLANO, JOSE LUIS HERNANDEZ,
MELISSA BACH, and DAVID ANDERSON,

ANSWER

Plaintiffs,

v.

ISAAC HERSHKO, HARVEY WEISMAN,
DAWN HERSHKO a/k/a DAWN ZICCARDI,
BO WEISMAN, YIFEI CHANG,
THE 22 S. LLC d/b/a THE PLAYHOUSE MARKET, and
22 S. BROADWAY LLC,

Defendants.

-----x

Defendant THE 22 S. LLC, d/b/a THE PLAYHOUSE MARKET, (“The 22 S. LLC”) by its attorney John V. O’Connor, Esq., as and for its Answer to the Amended Complaint, states as follows:

1. Denies each and every allegation as set forth in paragraph(s) 1, 2, 7, 9, 11, 12, 19, 21, 23, 24, 25, 30, 32, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47,48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 71, 73, 74, 75 , 82, 83, 84, 85, 86, 87, 89, 90, 91, 92, 94, 95, 96, 97, 98, 100, 101, 102, 103, 116, 118, 119, 120, 122, 123, 125, and 126 of the Amended Complaint
2. Denies knowledge and information sufficient to form a belief as to the allegations as set forth in paragraph(s) 3, 4, 5, 6, 13, 15, 16, 17, 18, 20, 26, 27, 28, 29, 31, 36, 46, 47, 50, 51, 70,7

73, 74, 75, 76, 77, 78, 79, 80, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, of the Amended Complaint.

3. Admits each and every allegation as set forth in paragraph(s) 10, 14, 22, 33, 34, 68, and 78 of the Amended Complaint.

AS TO THE FIRST CAUSE OF ACTION

4. In response to paragraph 81, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-80 as if fully set forth herein.
5. Denies each and every allegation as set forth in paragraph(s) 82, 83, 84, 85, 86, and 87 of the Amended Complaint.

AS TO THE SECOND CAUSE OF ACTION

6. In response to paragraph 88, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-87 as if fully set forth herein.
7. Denies each and every allegation as set forth in paragraph(s) 89, 90, and 92 of the Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION

8. In response to paragraph 93, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-92 as if fully set forth herein.
9. Denies each and every allegation as set forth in paragraph(s) 93, 94, 96, 97, and 98 of the Amended Complaint.

AS TO THE FOURTH CAUSE OF ACTION

10. In response to paragraph 99, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-98 as if fully set forth herein.

11. Denies each and every allegation as set forth in paragraph(s) 99, 100, 101, and 102 of the Amended Complaint.

AS TO THE FIFTH CAUSE OF ACTION

12. In response to paragraph 104, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-103 as if fully set forth herein.

13. Denies knowledge and information sufficient as to form a belief as to paragraph(s) 104, 105, 106, 107, 108 and 109 of the Amended Complaint.

AS TO THE SIXTH CAUSE OF ACTION

14. In response to paragraph 110, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-109 as if fully set forth herein.

15. Denies knowledge and information sufficient to form a belief as to paragraph(s) 111, 112, 113, 114, 115, and 116 of the Amended Complaint.

AS TO THE SEVENTH CAUSE OF ACTION

16. In response to paragraph 117, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-116 as if fully set forth herein.

17. Denies each and every allegation as set forth in paragraph(s) 117, 118, 119 and 120 of the Amended Complaint.

AS TO THE EIGHTH CAUSE OF ACTION

18. In response to paragraph 121, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-120 as if fully set forth herein.

19. Denies each and every allegation as set forth in paragraph(s) 122 and 123 of the Amended Complaint.

AS TO THE NINTH CAUSE OF ACTION

20. In response to paragraph 124, Defendant The 22 S. LLC repeats, reiterates, realleges paragraphs 1-123 as if fully set forth herein.

21. Denies each and every allegation as set forth in paragraph(s) 125 and 126 of the Amended Complaint.

AS AND FOR A FIRST AFFIRMITIVE DEFENSE

22. Defendant The 22 S. LLC was not the employer of the named Plaintiffs herein, and was not in “active management and control of the employees” as alleged in the Amended Complaint.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

23. Defendant The 22 S. LLC was not an enterprise as a condition precedent to bringing this action as defined under Sec. 3(r)(1) of the Fair Labor Standards Act of 1938 (“FLSA”) as alleged in the Amended Complaint.

**AS AND FOR ITS CROSS-CLAIMS AND AFFIRMATIVE RELIEF
FROM CO-DEFENDANTS**

24. If the named-Plaintiffs have sustained any damages as alleged in the Amended Complaint through any fault or liability other than their own, said damages were caused in whole or in part by Co-Defendants Isaac Hershko, Dawn Hershko a/k/a Dawn Ziccardi, and 22 S. Broadway LLC , and if any judgment is recovered by the Plaintiffs against The 22 S. LLC then said Defendant shall be entitled to judgment for indemnification, reimbursement, and/or contribution from the said Co-Defendants based on their proportionate liability for said damages.

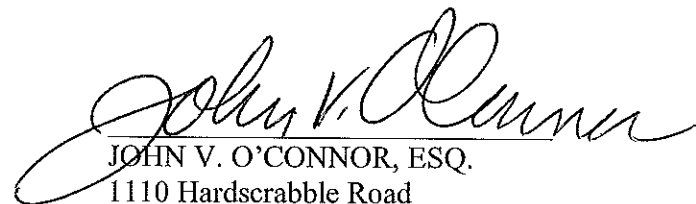
25. If Defendant The 22 S. LLC is held vicariously liable to the Plaintiffs as a result of the actions or liability of the Co-Defendants Isaac Hershko, Dawn Hershko a/k/a Dawn Ziccardi, and 22 S. Broadway LLC, The 22 S. LLC shall be entitled to indemnification, reimbursement, and/or contribution from the said Co-Defendants for such vicarious liability, plus costs and disbursements.

DEMAND FOR JURY TRIAL

26. Defendant THE 22 S. LLC hereby respectfully demands a trial by jury.

WHEREFORE, Defendant THE 22 S. LLC d/b/a THE PLAYHOUSE MARKET, respectfully demands judgment be entered in its favor dismissing the Complaint, and judgment be entered in its favor on the Cross-Claims alleged herein, together with costs and disbursements, and for granting such other and further relief as this Court deems just and necessary.

Dated: July 30th 2015



JOHN V. O'CONNOR, ESQ.
1110 Hardscrabble Road
Chappaqua, NY 10514
Tel.: 516-423-9296
Fax: 516-742-6070
Email: jvocesq@gmail.com

Attorney for Defendant
The 22 S. LLC d/b/a The Playhouse
Market